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November 7, 2014

*PER HAND-DELIVERY*

Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

RE: PSC Docket No. T-14.23.DR

Dear Public Service Commissioners:

This letter is submitted on behalf of this firm's client, Allied Waste Services of North America, LLC, doing business as Republic Services of Montana ("Republic") to provide comment in opposition to the *Petition for Declaratory Ruling* filed with the Commission on September 26, 2014 by Bull Mountain Sanitation, LLC ("Bull Mountain"). These comments are submitted in accordance with the two-week grace period granted for such comments at the Commission's October 21, 2014 Work Session.

Pursuant to PSC Certificate No. 1581, Subpart L, Republic is one of two permitted garbage haulers doing business in Musselshell County. The other Certificate permitting hauling in Musselshell County is held by Bayside Disposal, Inc. doing business as Disposal Service of Montana ("Bayside"). In addition to Republic and Bayside, the City of Roundup operates its own garbage hauling service within the city's limits. Bull Mountain, by its admissions in its Petition, provides service throughout Musselshell County. Musselshell County has one city, the City of Roundup, and one town, the Town of Melstone. Roundup has a population of over 500, and Melstone has a population of under 500, according to the 2010 United States Census.

As explained more fully below, Bull Mountain's Petition should be denied as contrary to Montana law, and as contrary to public policy in Montana. Granting Bull Mountain's Petition would cause the exemption to swallow the rule, and relegate Commission regulation of garbage haulers to only those cities and towns in Montana with populations greater than 500 persons, effectively creating islands of regulation in an otherwise deregulated state. Such a rewriting of Montana law would occur to the detriment of

ordinary Montanans who rely on the Motor Carrier Act's provisions and protections to ensure that they can obtain timely, safe, reliable, and cost effective garbage hauling services, no matter where they live.

The Motor Carrier Act makes it illegal to haul garbage for hire on the public highways within the state without a Class D Certificate of Public Convenience and Necessity ("Class D") unless an exemption applies. *See* Mont. Code Ann. § 69-12-401. The exemptions to the Motor Carrier Act are listed in § 69-12-102. Pertinent to Bull Mountain's Petition, the only exemption available to the Class D hauler requirements is found at § 69-12-102(1)(c), which provides that the Motor Carrier Act does not apply to:

The transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the [PSC].

*Id.* (hereinafter, "the exemption") While the Commission has determined that "commercial areas" means "all points within a distance not exceeding two miles from the post office" of such a city, town, or village (Admin. R. Mont. 38.3.106(1)), the Commission has not defined what "city," "town," or "village" mean under the Motor Carrier Act, or under the exemption.

The terms "city" and "town" are defined by statute in Montana. Specifically, "[a] city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted." Mont. Code Ann. § 7-1-4101. Cities and towns are classified according to their relative size, with a town being the smallest classification of municipalities under the Montana Code. Mont. Code Ann. § 7-1-4111; -4118. Although the term "village" is used in several instances in the Montana Code, it is nowhere defined within the Code.<sup>1</sup>

To be clear, while Bull Mountain identified several "census designated places"<sup>2</sup> in its Petition, it does not argue that these places are "villages," or that it should only be allowed to provide service to such areas.<sup>3</sup> Instead, Bull Mountain alleges it is exempt from regulation simply because it does *not* serve cities, towns, and villages over 500 people—in other words, it reads the exemption to mean that all rural areas of the State of Montana are exempt from Commission regulation of garbage haulers. *See* Petition at 6:1-10. Thus, although Bull Mountain avoids saying it outright in its Petition, it is seeking to have the Commission equate the term "village" with any rural area that isn't incorporated as part of a town or city.

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<sup>1</sup> In its Petition, Bull Mountain admitted that the term "village" is undefined in the Montana Code. Petition at 5:10-11.

<sup>2</sup> *See* discussion of "census designated places," *infra*.

<sup>3</sup> Petition at 3:3-5.

Bull Mountain's proposed interpretation is incorrect on a number of bases. First, it is contrary to the plain language of the exemption. *City of Great Falls v. Montana Dept. of Public Service Regulation*, 2011 MT 144, ¶ 18, 361 Mont. 69, 254 P.3d 595 (citations omitted) (statute's meaning is determined by plain meaning of words used, according to usual and ordinary meaning, without inserting what has been omitted or omitting what has been inserted). While a Montana citizen can readily ascertain what a "city" or a "town" is, as those terms are defined under Montana law, there is no way for the average person to determine what constitutes a "village." That said, the inclusion of all three terms impliedly suggests that each is a bounded area. One can ascertain the boundaries of cities and towns, based on their incorporation, with a simple inquiry to the Clerk and Recorder of a given County. One cannot conduct the same examination for villages, as the term is undefined. *See, e.g. Davis v. Stewart*, 54 Mont. 429, 171 P. 281, 282 (1918). However, contrary to what Bull Mountain would suggest, this does not mean that the word "village" means "every area that is unincorporated." No ordinary Montanan would ever equate the term "village" with "rural Montana" or "all unincorporated land areas."

Instead, the term "village" is, in reality, nothing more than a holdover colloquialism—it is entirely meaningless under Montana's statutory scheme, and as such there are no "villages" in Montana. Further, there are no "villages" with populations under 500 in Musselshell County. Simply put, the term "village" cannot be used as a basis to justify exempt hauling throughout rural Musselshell County, or rural Montana generally. Therefore, the Commission should deny Bull Mountain's Petition, and find that "village" does not encompass all unincorporated areas, and all of rural Montana.

Second, Mont. Code Ann. § 69-12-102(1)(c) is, importantly, an *exemption* to the Commission's oversight and regulation of garbage haulers, and as such it must be construed narrowly. *State ex rel. Dreher v. Fuller*, 257 Mont. 445, 453, 849 P.2d 1045, 1049-50 (1993) (exemptions in statutes pertaining to public health, safety, and welfare should be narrowly construed); *In Re L&L Site Services, Inc.*, PSC Docket No. T-06.32.PCN, Order No. 6845, July 26, 2007, at ¶ 25 (identifying residential and commercial garbage collection services as part of the public welfare). As an exemption to the Motor Carrier Act, § 69-12-102(1)(c) cannot be allowed to swallow the rule that garbage haulers generally must be subject to Commission regulation. Thus, contrary to Bull Mountain's assertions in its Petition, "village" cannot be read broadly to be synonymous with "unincorporated areas" or "rural areas," as such an interpretation would improperly exempt the vast majority of Montana's land area from regulation under the Motor Carrier Act.

Additionally, the Commission should not determine that a "village" is synonymous with a "census designated place." Section 69-12-102(1)(c), Mont. Code Ann. was first added to the Motor Carrier Act in 1947. 1947 Mont. Laws 489, 490, Ch. 262, § 1 (exempting "the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than 500 persons, or within the commercial areas thereof as determined by the board."). The term "Census Designated

Place” was not used by the Census Bureau until 1980. Bureau of the Census, *Geographic Areas Reference Manual*, 9-21 to 9-24 (1994) <https://www.census.gov/geo/reference/pdfs/GARM/Ch9GARM.pdf>. Thus, it is clear that the term “village,” as it was used in 1947, was not synonymous with the later-created “Census Designated Places,” and as such, the Commission should not determine that a “village” is any “census designated place.”

Further, the use of the term “city, town, or village” in § 69-12-102(1)(c) indicates that, if the term “village” has any meaning, it would be, stepwise, the smallest municipal area exempted. Because Census Designated Places are created for the purpose of denoting general areas, they do not necessarily include the smallest areas possible—to the contrary, Census Designated Places in Musselshell County cover broad swaths of land. For example, the City of Roundup covers an area of 1.34 square miles, while the Census Designated Places within Musselshell County cover much greater land areas—Klein covers 12.85 square miles, Camp Three covers 4.43 square miles, and Musselshell covers 2.55 square miles. See <http://www.census.gov/prod/cen2010/cph-2-28.pdf> at Table 8, PDF pg. 40. Therefore, if there is any “village” in Musselshell County, it should not be larger than the only “city”—and thus Census Designated Places should not be allowed as a substitute for the meaningless term “village.”

Beyond the issue of the plain meaning of the statutory exemption, granting the Petition would be bad public policy for the people of Montana. Class D regulated garbage haulers are required to provide garbage service to any potential customer requesting service within their geographical boundaries. Mont. Admin. R. 38.3.1201(1). This regulation ensures that all Montanans are provided access to garbage hauling services, no matter that they might be so remote as to be unattractive customers for a regulated hauler. Further, pursuant to Montana Code and Commission rules, regulated haulers are required to carry certain minimum insurance. Mont. Code Ann. § 69-12-402; Mont. Admin. R. 38.3.701 through 709. This insurance requirement ensures that ordinary Montanans are guaranteed protections if they or their property are injured or damaged by a Class D hauler.

Granting Bull Mountain’s Petition would take both of these protections away from Montana citizens. First, regulated haulers could easily be pushed out of business by unregulated haulers in rural areas, especially where those unregulated haulers aren’t required to obtain the same insurance as regulated haulers. If this occurs, many rural Montanans will be left without garbage pickup service, as the unregulated haulers will be under no requirement to provide service to anyone who asks. Further, because unregulated haulers are not required to obtain minimum insurance, Montanans who are injured by an unregulated hauler will face the real possibility of having those harms remain uncompensated. This is bad policy for Montanans, and the Commission should deny Bull Mountain’s Petition.

What Bull Mountain is asking the Commission to determine is that it should be allowed to

provide services to 61% of the residents of Musselshell County,<sup>4</sup> and 99.93% of the County's land area,<sup>5</sup> without ever applying for, or obtaining a Class D Certificate, without ever being required to carry minimum insurance to ensure the safety of Montanans and its employees, and without having the obligation to serve everyone requesting service. All of this while there are already two PSC licensed Class D haulers in Musselshell County. This is contrary to the exemption, and would set a bad policy precedent for Montana. Therefore, for all the above-described reasons, Republic respectfully requests that the Commission deny Bull Mountain's Petition, and instead find that Bull Mountain's unregulated hauling falls outside the statutory exemption.

Thank you for the opportunity to submit comments in this matter. We look forward to the Commission's determination on Bull Mountain's Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank C. Crowley", with a stylized flourish at the end.

Frank C. Crowley  
Senior Counsel

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<sup>4</sup> According to the 2010 Census data, the City of Roundup has a population of 1,788, with Musselshell County having a population of 4,538 in total. See <http://www.census.gov/prod/cen2010/cph-2-28.pdf> at Table 8, PDF pg. 40.

<sup>5</sup> Bull Mountain argues that it may serve, under § 69-12-102(1)(c), all of Musselshell County, save for the City of Roundup. The City of Roundup has a land area of 1.34 square miles, while Musselshell County has a land area of 1,686.16 square miles. *Id.*